United Nations CRPD/C/HUN/CO/1/Add.1

Convention on the Rights of Persons with Disabilities

Distr.: General
23 November 2017

Original: English
English, Russian and Spanish only

Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Hungary

Addendum

Information received from Hungary on follow-up to the concluding observations*

[Date received: 28 October 2013]

* The present document is being issued without formal editing.

GE.17-20826(E)

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Introduction

1. The Hungarian Government delegation gave its first account of the implementation of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention), ratified by Hungary in 2007, in September 2012. Based on the two-day dialogue with the UN Committee on the Rights of Persons with Disabilities, the Committee adopted its concluding observations, in which it also included its positive comments and recommendations for the future and it requested Hungary to provide information about measures taken in respect of the recommendations included in paragraphs 26 and 46 of the final conclusions within twelve months.

2. Hungary fulfils the request of the Committee by submitting the following report:

Paragraph 26 in full

3. *26. The Committee recommends that the State party use effectively the current review process of its Civil Code and related laws to take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respects the person's autonomy, will and preferences and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of residence. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges, and social workers, on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.*

Response of Hungary to the recommendations contained in paragraph 26.

The new Civil Code

4. Act V of 2013 on the new Civil Code (hereinafter referred to as the new Civil Code) will enter into force on 15 March, 2014. The rules of the capacity to act[1] and the fundamental provisions on supported decision-making are laid down in the Second Book of the new Civil Code. While drafting the new rules, we took the provisions of the Convention into account.

5. In comparison to the rules in force the new Civil Code brings about an important change by leaving no opportunity for any general restriction of the capacity to act which provides a new basis for the rules applicable to natural persons of legal age. The capacity to

[1] The concept of "legal capacity" as used in common law systems is divided into two separate concepts in the Hungarian legal system, namely, that of "legal capacity" and the "capacity to act". The former stipulates that the person concerned is capable to be a holder of rights and obligations. In Hungary, all persons have "legal capacity", which can be neither restricted nor renounced. On the other hand, the "capacity to act" means that the person concerned can acquire rights and assume obligations, that is, he or she may contract or make legal statements independently, accept legal statements addressed to him or her validly, as well as initiate and take action in different court proceedings independently. In Hungary, the "capacity to act" may be restricted partially or fully in the case of diminished discretionary power, on the basis of individual court decisions.

To illustrate the difference between "legal capacity" and the "capacity to act", court proceedings may provide a good example. In Hungary, all persons have the right to a fair trial. This also entails the right to legal remedies, e. g. the possibility to appeal against the court decision. Persons under guardianship are also holders of this right on equal basis with others and cannot be deprived of it, either. In their case, however, because of the partial or full restriction of the capacity to act, the appeal documents are not submitted by the persons concerned themselves but by the guardian acting on their behalf.

The present document provides information about the implementation of paragraphs 26. and 46. of the Concluding Observations of the CRPD with regards to the capacity to act and adapts its terminology accordingly.

act may only be restricted in the groups of affairs determined by the court. Accordingly, the capacity to act can be limited either fully (which, with some important exceptions, corresponds to guardianship excluding the capacity to act) or partially (which refers to limitation according to a certain group of affairs). It is an important rule that the capacity to act may only be limited fully if partial restriction is not sufficient for protecting the rights of the person concerned. When ordering a placement under guardianship, the principles of necessity and of proportionality, which are also emphasized by the Convention, are of fundamental importance. In conformity with the Convention, a prevailing principle of the new Civil Code is that the capacity to act may only be limited, either fully or partially, if the rights of the person concerned cannot be protected in any other manner that does not affect his or her capacity to act.

6. By abolishing the possibility of general restriction, the new Civil Code focuses on targeted assistance. To this end the court must make personalized decisions on restricting capacity to act in the various groups of affairs, examining the living conditions of the person to be placed under guardianship. This guarantees that the legal consequences of placement under partial guardianship are individualized and adjusted flexibly to the specific conditions. The new Civil Code refrains from even attempting to supply examples of the groups of affairs in which the court may restrict the capacity to act in its judgement, thus making it possible for the judicial practice to better adapt to individual circumstances. In its decision restricting the capacity to act, the court must consider the individual circumstances when specifying the group or groups of affairs in which restriction is essential. Furthermore, the court must justify the necessity of the restriction of the capacity to act with regards to each group. The restriction of the capacity to act is not acceptable in respect of a certain group of affairs if the only reason for such restriction is that it has already been proved in relation to another group of affairs that the person concerned is unable to make a legal statement.

7. Instead of the three expressions "mental state, unsound mind, or pathological addiction" mentioned in the currently valid Civil Code,[1] the new Civil Code uses the expression "mental disorder" among the conditions of restricting the capacity to act, having regard to the development of medicine. The reason for this change is that the concept of "mental disorder" refers to all psychological disorders, in a more comprehensive manner than the original list and bringing the new regulation into a closer conformity with the Convention at the same time.

8. In addition to the diminished discretionary power, the conditions of placement under guardianship have been supplemented by the criterion "the individual circumstances, family relationships and social relations" of the person concerned. This means that diminished discretionary power by itself is not a sufficient reason for restricting the capacity to act. When establishing whether placement under guardianship is necessary, the judge must also take into account the individual and family circumstances of the person concerned. The court should examine not only whether the person concerned is able to conduct his or her affairs unaided but also whether, in the event of the diminishing of his or her discretionary power, his or her environment or family offers sufficient assistance for him or her to be able to act effectively.

9. The new Civil Code abolishes guardianship that excludes the capacity to act but under certain strict conditions it provides an opportunity for the full restriction of the capacity to act. The purpose of the regulation is that the full restriction of the capacity to act only be used as a last resort, within narrower bounds than the guardianship excluding the capacity to act provided for in the currently valid Civil Code, if it is established following careful consideration of the facts by the judge that the partial restriction according to a certain group of affairs is not sufficient to protect the person concerned. That is to say, the principle of necessity is a fundamental point of reference in the case of placement under fully restricting guardianship, as well. Fully restricting guardianship may only be ordered exceptionally, if the person concerned is unable to make a legal statement even jointly with his or her guardian and if it is absolutely necessary that somebody acts on his or her behalf.

[1] Act IV of 1959 on the Civil Code of the Republic of Hungary.

10. Placement under guardianship is not for an indefinite period but the court must specify the date of mandatory review in all cases, which introduces a very important guarantee rule. A significant change is that the new Civil Code — unlike the currently valid regulation — does not allow any exceptions from the mandatory review. The review is mandatory in the case of both the partial and the full restriction at statutory intervals. This mode of regulation is justified by the fact that the condition and circumstances of a person under guardianship may significantly change over time, which can lead to an inequitable situation in the absence of mandatory reviews. The review procedure must be instituted by the guardianship authority *ex officio*. Of course, the mandatory review does not exclude the right of the persons entitled to initiate proceedings for the termination of guardianship — including the person under guardianship — to request the termination or modification of guardianship at any time.

11. The fact that the rules of the capacity to act have been amended to the advantage of those concerned calls for the review of the circumstances of persons currently under guardianship, within a relatively short period. **The cases of all persons currently under guardianship must be reviewed according to the new rules within five years.** It will be the responsibility of the guardianship authority to initiate the mandatory reviews within the specified time limit, whereas the review of placements under guardianship will remain within the competence of the court.

12. The National Records Programme of Persons Under Guardianship is operated by the National Office for the Judiciary, in a system developed by the predecessor of the National Office in 2002. Using these records, specific statistical data about placement under guardianship excluding or restricting the capacity to act can be accessed. The tables including these data can be found in Appendices 1 and 2.

13. The rules on the validity of the legal statements of a person under guardianship will remain unchanged. In the groups of affairs in which the capacity to act of a person under guardianship has been limited, the person under guardianship may make valid legal statements with the approval of his or her guardian. Should a dispute arise between the person under guardianship and the guardian, the guardianship authority must decide on the matter. Similarly to the currently valid regulation, the new Civil Code specifies the legal statements that can be made by a person of legal age whose capacity to act is partially restricted on his or her own. Similarly to the legal statements that can be made by minors of limited capacity on their own, the possibility of giving gifts of usual value has also been added to this list. The new Civil Code maintains that the guardian should only be allowed to act on behalf of the person under guardianship and make any legal statements on his or her own in exceptional cases where immediate action is required and only in order to protect the person under guardianship. If the guardian acts on his or her own, both the person under guardianship and the guardianship authority must be notified. The provisions concerning the legal statements of incapable persons with fully restricted capacity to act of legal age will also remain the same. Their legal statements shall be null and void and their guardian shall act on their behalf but the guardian shall be obliged to listen to the opinion of the person under guardianship and take that into account when making decisions that affect the person under guardianship.

14. The new Civil Code supplements the currently valid provisions that contain fundamental guarantee rules applicable to the appointment of guardians and the rights and obligations of guardians with additional points. It still allows for the possibility to appoint several guardians or a substitute guardian but it also adds a provision to the applicable rules, which clarifies the distribution of tasks when appointing several guardians. The new Civil Code contains explicit provisions on the guardian's responsibility in the event that he or she acts exceeding his or her powers. The new Civil Code also goes into more detail on the supervision of guardians' activities and on reporting rules.

15. Concerning persons of legal age whose decision-making ability is limited, the new Civil Code also provides for legal institutions other than the restriction of the capacity to act. Thus, in accordance with the international legal standards and having regard to the principles of necessity and proportionality, the new Civil Code mentions the possibility of supported decision-making. Here, the supporting person may give assistance in decision-making without limiting the capacity to act of the person concerned. With the introduction

of supported decision-making as a new legal institution, assistance can be provided on the basis of individual needs, without restricting the capacity to act of the person concerned. During supported decision-making, the person of limited power of judgement is assisted by one or more persons who are in a confidential relationship with him or her. The guardianship authority appoints the supporting person in agreement with the supported person, pursuant to the provisions laid down in a separate legal regulation. The detailed rules of supported decision-making are not included in the Civil Code for the very reason that the appointment of a supporting person does not affect the capacity to act of the supported person: his or her capacity to act remains unlimited and he or she may make valid legal statements on his or her own.

16. Compared to the rules in force, the possibility of making an advance legal statement appears as a new legal institution in the new Civil Code. According to this provision any person of the capacity to act may determine who his or her guardian should be in the event of any restriction of his or her capacity to act and he or she may also determine the way in which his or her guardian should act in his or her personal and financial affairs.

Supported decision-making

17. In order to introduce the new legal institution of supported decision-making it is necessary to pass a separate, new act, which aims at providing assistance to persons of limited power of judgement in their decision-making without restricting their capacity to act. The major provisions of the bill introduced to the Parliament to this end on 6 September 2013 can be summarized as follows:

- A supporting person may be appointed at the request of the supported person or based on the request of the court.
- The appointment of a supporting person shall be conditional upon the approval of the supported person.
- The guardianship authority shall conduct a personal hearing of the person in need of support and the supporting person in the appointment procedure of a supporting person.
- In general, such person must be appointed as a support who is nominated by the supported person and who agrees to perform this duty. The grounds for exclusion applicable to the performance of the supporting person's duties are similar to those concerning guardianship, since it must be ensured that the opinion and interests of the person in need of support are asserted and that the person who provides support is suitable for performing his or her duties.
- The bill provides that the supporting person may be present at all stages of administrative, civil or criminal procedures that affect the supported person and he or she may discuss any issue with the supported person in a way that does not disturb the order of the procedure. The supporting person may be present when the supported person makes his or her legal statements and may contribute to the supported person's making of a legal statement through giving advice and information, but may not take the decision on behalf of the supported person.
- Pursuant to the bill, the guardianship authority will appoint the supporting person for an indefinite period. However, the necessity of the appointment will be reviewed every five years. An extraordinary review can be conducted in the interest of the supported person if it is requested either by the supported or the supporting person and if any fact or circumstance (e.g. placement under guardianship) occurs that justifies such review.
- To ensure that the possibility of supported decision-making is also available to those with no trusted persons in their environment who could be appointed as supporters, the bill contains the possibility of appointing a professional supporting person — similarly to the appointment of a professional guardian.
- The bill establishes the duties of supporting persons and prescribes a reporting obligation for professional supporters.

18. We hope that the judicial practice will confirm that supported decision-making can be a real alternative to the placement under guardianship, which would also contribute to the effective implementation of the Convention.

19. The introduction of the new legal institution will be serviced by a training-course provided for all professional supporting persons. The supported and their supporting persons will receive information materials about new opportunities. The financial resources for the implementation of this are planned to be ensured within the framework of a development programme devoted to the modernization of welfare services (TÁMOP-5.4.1-12/1).

20. There are no changes in the new Civil Code in that marriage can only be contracted in person and that a person of limited capacity to act can also marry unaided.

Training

21. The central training plan of the Hungarian Judicial Academy for the year 2012 contained a training titled "On the family law provisions of the Fundamental Law", which was held for the judges dealing with family law cases.

22. In the future we intend to pay special attention to monitoring the entry into force of the new provisions and to improving the preparedness of judges. The related government tasks are planned to be included in the new National Disability Programme for the years 2014-2020.

23. The system of further education in the public service has been transformed in Hungary by Government Decree No. 273/2012 (IX. 28) on Public Service Trainings. Along with reorganizing the institutional system, the Decree determined the obligation of retraining and the order of financing. Through the system of quality management, it standardized and made the order of improving and qualifying trainings, as well as the professional requirements of those more transparent. As to the examination system of public officials, past years saw important changes in the reintroduction of the primary examination (with new contents and a new methodological framework) and in the continuous renewal of the administrative examination.

24. The system of trainings and retraining aims to enhance the discussion on the special circumstances arising from the specific circumstances of persons with disabilities (and other disadvantaged groups) as well as the legal and other consequences arising from the same (e.g. the restriction or exclusion of the capacity to act, the accessibility of public institutions, ensuring access to services etc.) in a number of ways.

25. The curriculum of the module entitled "General Public Administration" — which is one of the mandatory parts of the administrative examination — refers to the above in connection with the constitutional guarantees of personal freedom. In the course of describing autonomous government agencies, it outlines the tasks of the Equal Treatment Authority which has a highly important public role in the above fields. The purpose of the administrative examination is that public servants with higher education qualifications acquire general administrative knowledge, in possession of which they become competent in legally preparing and making public authority decisions in a wide range of administrative authorities, in accordance with the purposes of public administration and using the means of public administration effectively.

26. Within the new system of further education, there are already several training programmes discussing disability-related issues. They are included in the programme describing the *administrative procedure* — especially in connection with the capacity to act — and in the *training for* administrators *on Government Windows*, i.e. the integrated, single-window government customer service system, mainly in connection with the access to public services of persons with disabilities.

27. In addition to the already existing contents, the development of several new retraining programmes is in progress. These will become available to public servants during 2014. Special mention must be made of the programme that *expressly deals with disabilities and the life situations affecting persons with disabilities*. In addition, two other programmes in which the above issues have a prominent part are also being developed: the

further education programmes entitled *Inclusion and Equal Opportunities* and *Welfare Policy and Social Services*.

Paragraph 46 in full

28. *46. The Committee recommends that all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others.*

Response of Hungary to the recommendations contained in paragraph 46.

29. Pursuant to paragraphs (1) and (2) of Article XXIII of the Fundamental Law every adult Hungarian citizen shall have the right to be a voter as well as a candidate in the elections of Members of Parliament, local representatives and mayors, and of members of the European Parliament, and every adult citizen of any other member state of the European Union who is a resident of Hungary shall have the right to be a voter as well as a candidate in the elections of local representatives and mayors, and of members of the European Parliament.

30. Although paragraph (6) of Article XXIII of the Fundamental Law provides an opportunity to limit the voting rights of persons with intellectual disabilities, it still represents an enormous progress compared to the provisions of the previous Constitution in that it does not make such restriction mandatory and automatic.

31. Pursuant to the Constitution effective prior to 1 January 2012, persons who for any reason were subject to guardianship excluding or limiting the capacity to act were excluded from the right to vote automatically and generally, irrespective of the extent of their mental disability [paragraph (5) of Article 70 of the Constitution]. In contrast with this the new Fundamental Law — also complying with the judgement of the European Court of Human Rights passed in the case *Alajos Kiss v. Hungary* — requires that the examination of the lack or limitation of discretionary power of persons placed under guardianship should specifically extend to their ability to exercise their voting rights. Accordingly, persons placed under guardianship may only be excluded from the right to vote based on the basis of individual deliberation of the case by the judge, taking into consideration the actual abilities and circumstances of the person concerned in terms of suffrage while continuously keeping in mind the requirements of necessity and proportionality during the entire procedure, the outcome of which may be challenged by a constitutional complaint. Thus, while we focus on the implementation of Article 29 of the Convention, we also pay attention to coordinating our measures with the other provisions of the Convention, in particular with its Article 12.

32. Article XV of the Fundamental Law of Hungary provides for the prohibition of discrimination in general and for the promotion of equal opportunity. Paragraph (2) of Article XV of the Fundamental Law provides that fundamental rights shall be ensured to every person without any discrimination and it expressly mentions persons with disabilities. In accordance with this, paragraph (6) of Article XXIII of the Fundamental Law does not contain any discriminative provisions either and its content does not exclude the enforcement of the requirement of examining the existence of discretionary power concerning the right to vote on a non-discriminatory basis. Although the statutory provisions implementing the Fundamental Law [see Section 13/A of Act XXXVI of 2013 on the Election Procedure and in respect of the transitional rules paragraph (4) of Section 349 of the same act] associate the examination of discretionary power in respect of the right to vote with the procedure for placement under guardianship excluding or restricting the capacity to act, and the lack of the capacity to act in terms of suffrage cannot be established by itself — without the limited discretionary powers extending to other areas —, the procedure for placement under guardianship may be initiated against anybody.

33. Furthermore, it must also be stressed that Hungarian laws provide the opportunity of examining the discretionary power related to the right to vote in individual procedures, involving an expert, but they do not predetermine the individual decisions made by legal practitioners in such cases at all. Consequently, the appropriate expert examinations must

be conducted in the individual procedures and if, based on the expert examinations carried out according to the actual state of knowledge, the legal practitioner establishes that the lack of discretionary power cannot be proved in respect of the right to vote, then the consequences of this — that is, that the person concerned is not excluded from the right to vote — must be established in the individual procedures. This is not prevented by either the Fundamental Law or any other Hungarian law.

34. In connection with the statistics included in Appendix 2 attached hereto we would like to point out that the relatively high number of those excluded from the right to vote under the transitional provisions of the Fundamental Law is based on that pursuant to paragraph (2) of item 24 of the "Closing and Miscellaneous Provisions" of the Fundamental Law a person who was under guardianship restricting or excluding his or her capacity to act based on a final judgement when the Fundamental Law entered into force shall have no right to vote until the guardianship is terminated or the court establishes the existence of his or her right to vote. It follows from this transitional provision (and, in line with this, from the transitional provision included in Section 349 of Act XXXVI of 2013 on the Election Procedure) that all those in whose case the judicial review procedure related to the placement under guardianship has not yet taken place (meaning that their discretionary power relating to the right to vote could not be examined either) shall temporarily remain to be regarded as persons excluded from the right to vote. However, it has to be underlined that this situation is temporary as the review procedures are mandatory pursuant to Section 14/A and paragraph (5) of Section 15 of Act IV of 1959 on the Civil Code and, from 15 March 2014, Section 229 of the new Civil Code.

Appendix 1

Statistical data on placement under guardianship excluding or restricting the capacity to act

		01.08.2013
	TYPE	
	excluding	34 174
	restricting	24 442
	n.a.	2 643
	Total	**61 259**
GROUP OF AFFAIRS	**SUB-GROUP OF AFFAIRS**	
Applying for social security, welfare and unemployment benefits and disposition over such benefits and any income received for work, whether by employment contract or other similar relationship, in excess of the extent defined in item c) of paragraph (2) of Section 14/B of the Civil Code.		16 184
Right of disposition over movable and immovable property.		17 018
Making legal statements related to family affairs.	Statements related to property law in connection with marriage or civil partnership.	14 745
	Statements in connection with the establishment of parentage.	14 416
	Naming his/her child or changing the name of his/her child.	14 314
	Consent to the adoption of his/her child.	14 353
Decision concerning the financial aspects of the obligation to provide support.		15 092
Statements in connection with the rental of a residence (conclusion and termination of contract).		15 357
Inheritance matters.		15 541
Statements in connection with placement in a residential social institution.		15 000
Exercise of rights in connection with health care.		15 494
Selecting a place of domicile.		14 758
Other		18 161

	01.08.2013
RIGHT TO VOTE	
Not excluded	1 333
Excluded in a final judicial decision	8 507
Excluded based on the Transitional Provisions of the Fundamental Law of Hungary	51 419
Total	**61 259**

Source: National Office for the Judiciary, National Records Programme of Persons Under Guardianship.

Appendix 2

Current situation of the voting rights of persons under guardianship

County	*Not excluded*	*Excluded in a final judicial decision*	*Excluded based on the transitional provisions of the Fundamental Law of Hungary*
Budapest	287	870	7 885
Baranya	32	342	1 457
Bács	63	481	2 972
Békés	18	479	2 284
Borsod-A-Z	113	468	3 747
Csongrád	46	428	3 068
Fejér	62	434	2 409
Győr-M-S	57	374	1 775
Hajdú-Bihar	100	542	3 830
Heves	58	373	1 838
Jász-N-Sz	11	305	1 802
Komárom-E	27	194	1 784
Nógrád	41	163	1 043
Pest	123	756	4 625
Somogy	32	312	1 754
Szabolcs-Sz-B	138	928	3 642
Tolna	23	205	1 223
Vas	62	328	1 330
Veszprém	28	220	1 347
Zala	12	305	1 601
TOTAL:	**1 333**	**8 507**	**51 416**

Source: National Office for the Judiciary.